



State of New Mexico
Office of the Natural Resources Trustee

GARY E. JOHNSON
Governor

Dr. William M. Turner, Trustee
Steven Cary, Deputy Director
Charles de Sallan, Counsel

September 1, 1999

Ms. Patricia Madrid
Attorney General
P.O. Drawer 1508
Bataan Memorial Building
Santa Fe, New Mexico 87504-1508

ORIGINAL MAILED U.S. MAIL
COPY FAXED TO 505-827-5826

RE: REQUEST FOR RECISION OF *ULTRA VIRES* ACTIONS

Dear Attorney General Madrid:

Having returned from my vacation on August 28th to find that you, my attorney for the Office Natural Resources Trustee, have *sua sponte* usurped my statutory authorities was indeed troublesome. As the days roll on, I find more evidence of your malfeasance in office.

As you know, I have sent a \$260 million bill to potentially responsible parties in the Albuquerque South Valley Superfund Site. Hardly a go-easy approach to PRPs and hardly an effort by the Johnson Administration to appease polluters as you are quoted in the Albuquerque Journal today. I also find your statements strange in light of your insistence that only you have authority to settle another case initiated by my office and for a sum far less than I would have accepted.

If the Albuquerque Journal story today is to be believed, your efforts to characterize your actions in political terms is indeed specious dissimulation and does not serve New Mexicans well. The pace of activities in my office are controlled by funding from the legislature to do our job. They have never given my office the proper funding and I have tried to develop ways to accomplish my responsibilities without any funding for NRDA studies.

At the Albuquerque South Valley Site, my office faces serious statute of limitations problems. We have three years from the date on which the switch was thrown to activate the clean-up equipment to initiate settlement negotiations under tolling agreements or initiate litigation for our NRDA claims. The three year period would have expired in the first week of April, 1999. We presently have such a tolling agreement that terminates at the end of September.

As a matter of policy, I decided to extend the tolling agreement. Mr. de Sallan, of your office, forwarded a second tolling agreement to the PRPs. Our first tolling agreement was negotiated in March under your administration and with your knowledge. I am surprised at your about face on this matter without contacting me.

Phone: (505) 827-1045
FAX: (505) 827-1049

1190 St. Francis Dr.
P.O. Box 26110
Santa Fe, NM 87502

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SEPTEMBER 1 1999**

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Lamentably, by letter dated August 24, 1999, without any discussion with me, you, *sua sponte*, usurped my authorities again and notified each of the PRPs to disregard the tolling agreement. As my attorney, you had no authority to do so and your act, in my opinion, represents deliberate malfeasance with full knowledge prepense of your actions. You personally are an attorney, a former judge I believe, and the controlling mind of your agency with many attorneys on staff to advise you. Therefore, you can not make a claim or defense of inadvertency or ignorance for your actions. Your actions are not only, in my opinion, malfeasant, they are arbitrary and capricious. With your legal credentials and with the legal counsel at your disposal, in my opinion, there can be no issue of non-feasance or misfeasance involved here. In my view, your actions are not only illegal but they raise serious questions regarding your respect for the rule of law and your suitability to serve New Mexicans as Attorney General.

I, therefore, demand that you notify the Albuquerque South Valley PRPs on behalf of my agency by the close of business today, September 1, 1999, in writing, to disregard your letter of August 24, 1999 and to provide you with any suggestions that they may have regarding the tolling agreement. For example, I do not intend to hold the PRPs liable for continuing damages that may occur because of the tolling agreement. Provide me with a copy of your letter to them.

On another, but related matter, I note that you have also sent a letter dated August 27, 1999 to Molycorp in which you rescind any potential tolling agreement that ONRT may have with Molycorp. I am attaching a copy of that letter as well.

Had you discussed Molycorp with me, you would have learned that my office has never sent a tolling agreement to Molycorp. Again, your actions indicate arbitrary and capricious and uninformed action by you as the controlling mind of your agency.

I also demand that you write Molycorp by the close of business today, September 1, 1999, and retract any statements you may have made to them with regard to the authorities of my office. My office, the New Mexico Environment Department and the U.S. Trustees will initiate discussions with Molycorp towards a global settlement of all issues and your actions may have poisoned the atmosphere in which we wish to operate. Provide me with a copy of your letter.

My office is in Albuquerque. Provide copies of correspondence to me by telefacsimile transmission and to:

Dr. William M. Turner
Natural Resources Trustee
610 Gold Avenue, Southwest - Suite 111
Albuquerque, New Mexico 87102

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SEPTEMBER 1 1999

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Thank you for your attention to these matters. I look forward to our meeting on September 7, 1999.

Sincerely,



Dr. William M. Turner
Natural Resources Trustee

Encl: August 24 letter to Albuquerque South Valley PRPs.
August 27, 1999 letter to Molycorp.

cc: Interested Parties

CERTIFICATE OF DELIVERY

I, William M. Turner, hereby swear, affirm, certify and depose that I have mailed the hereinabove instrument and enclosure to the hereinabove addressee by U.S. Postal Service, postage prepaid and have provided a copy of this instrument by telefacsimile transmission to the hereinabove telefacsimile number this 1st day of September, 1999.


William M. Turner